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ABSTRACT

Major provisions of Public Law 94-142, the Education for All Handicapped Children Act, are cited and discussed in this guide for teacher association leaders and staff. The role of local and state educational agencies in providing a free, appropriate, public education for handicapped students and methods for involving teachers, their associations, and parents in this effort are investigated. Relevant passages from Section 504 of the Rehabilitation Act of 1973 (a civil rights law addressing, among others, the topic of education) and of PL 94-142, as well as supporting regulations for each of the Acts, are highlighted. The document is divided into four sections devoted to: (1) general provisions of PL 94-142 purpose, definition of terms, priorities, relationship between PL 94-142 and Section 504; (2) providing a free, appropriate, public education for handicapped childrenpreplacement evaluation, evaluation timeliness, individualized education programs (IEPs), placement in least restrictive environments, teacher appeals of placement, physical education for the handicapped, learning materials, school district liability for educational services; (3) special teacher concernsclass size, personnel, compliance procedures, student attitudes, elimination of physical barriers, coordination of regular and special education programs, inservice education, teacher association involvement; (4) rights of parents of handicapped children-parent participation in the IEP, independent evaluation, parental consent and notification, confidentiality of information, and procedural due process rights of parents. (MJB)

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INFOPAC NO. 11

# A Teacher's Reference Guide to PL 94-142

U.S. DEPARTMENT OF HEALTH, EDUCATION & WELFARE
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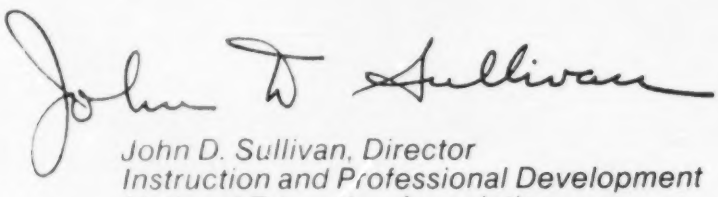

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It is BEH policy not to endorse any documents prepared by outside agencies or organizations.

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## PREFACE

The National Education Association (NEA) supported the passage of the Education for All Handicapped Children Act (Public Law 94-142) and is committed to making the law work. This guide was developed to keep teacher association leaders and staff informed about the law and, because of its complexity, to save them time in researching answers to questions from members and others.

The guide cites and discusses the major provisions of PL 94-142, describing how local and state educational agencies are to provide a free appropriate public education for handicapped students and how teachers, their associations, and parents are to be involved. Citations are taken from both Section 504 of the Rehabilitation Act of 1973 and PL 94-142. Section 504 is a civil rights law which addresses the topic of education, among others, whereas PL 94-142 is an educational grants program. Each piece of legislation is accompanied by regulations which have the force of law. All citations in this guide from either the law or the regulations appear in italics; underscoring indicates added emphasis by the editors.

We suggest to teacher leaders that, rather than reading this document straight through, they use it as a reference for answering their own and members' specific questions about PL 94-142. (Both a detailed table of contents and an index are included.) The guide does not specify what action a teacher should take when faced with a particular problem; it is up to the teacher and his or her local association to take action appropriate to the local situation, be it informal resolution of differences, the filing of a grievance, or a court challenge. Nor does this guide present all the issues teachers and their leaders may be faced with in relation to PL 94-142. We suggest that in researching areas not covered in the guide they refer to the index that accompanies the PL 94-142 regulations (regulations Appendix B), compare sections within the body of the regulations

with the "Analysis of Final Regulation" (regulations Appendix A), and check the sections and analysis in the 504 regulations for relevant citations.

Public Law 94-142 is a new law and our experience with it is new. It is also subject to conflicting interpretations. All parties involved with the law -- including the Bureau of Education for the Handicapped (BEH) in the U. S. Department of Health, Education, and Welfare (HEW) which is charged with administering it -- recognize that the PL 94-142 regulations are not set in cement. The law will undoubtedly be reinterpreted and, we hope, clarified in needed areas through legislative amendments, revisions of the regulations, and court challenges. It is important that teachers and their representatives play major roles in implementing and revising the law and regulations so that their concerns are considered.

Brenda Fox
Professional Associate
NEA Instruction and Professional Development

# I. GENERAL PROVISIONS OF PL 94-142

## A. Purpose of the Act

SITUATION: A music teacher has heard a great deal about a new law -- PL 94-142 -- since a number of her fellow teachers have been deeply involved in writing "IEPs." She has asked what the purpose of the new law is.

RESPONSE/DOCUMENTATION: The purpose of PL 94-142 -- the Education for All Handicapped Children Act of 1975 -- is to ensure a free appropriate public education for all handicapped children. Section 601(c) of the law states:

> *It is the purpose of this act to assure that all handicapped children have available to them, within the time periods specified in Section 612(2)(B), a free appropriate public education... to assure that the rights of handicapped children and their parents or guardians are protected, to assist States and localities to provide for the education of all handicapped children, and to assess and assure the effectiveness of efforts to educate handicapped children.*

This is also quoted in Section 121a.1 of the regulations. The timelines specified in Section 612(2)(B) are as follows:

> *...a free appropriate public education will be available for all handicapped children between the ages of three and eighteen within the State not later than September 1, 1978, and for all handicapped children between the ages of three and twenty-one within the State not later than September 1, 1980, except that, with respect to handicapped children aged three to five and aged eighteen to twenty-one, inclusive, the requirements of this clause shall not be applied in any State if the application of such requirements would be inconsistent with State law or practice, or the order of any court, respecting public education within such age groups in the State.*

## B. Definition of Handicapped

SITUATION: An elementary school teacher asks if gifted children are included in the definition of "handicapped" under PL 94-142.

RESPONSE/DOCUMENTATION: No. Section 121a.5 of the regulations defines handicapped children as:

*...those children evaluated...as being mentally retarded, hard of hearing, deaf, speech impaired, visually handicapped, seriously emotionally disturbed, orthopedically impaired, other health impaired, deaf-blind, multi-handicapped, or as having specific learning disabilities, who because of those impairments need special education and related services.*

The terms used within this definition are further defined in the regulations.

C. Definition of Free Appropriate Public Education

SITUATION: The parent of a handicapped child would like to know what is meant by the term "free appropriate public education" and if the local school district is legally obligated to pay for her child's education.

RESPONSE/DOCUMENTATION: Section 121a.4 of the regulations defines "free appropriate public education" to mean:

*... special education and related services which:*
*(a) Are provided at public expense under public supervision and direction, and without charge,*
*(b) Meet the standards of the State educational agency...,*
*(c) Include preschool, elementary school, or secondary school education in the State involved, and*
*(d) Are provided in conformity with an individualized education program....*

D. Definition of Special Education

SITUATION: A teacher has had a handicapped student placed in her classroom. She would like to know what services the child is entitled to under the PL 94-142 definition of "special education."

RESPONSE/DOCUMENTATION: "Special education" is defined under Section 121a.14 of the PL 94-142 rules and regulations as follows:

*(a) (1) ... "special education" means specially designed instruction, at no cost to the parent, to meet the unique needs of a handicapped child, including classroom instruction, instruction in physical education, home instruction, and instruction in hospitals and institutions.*

*(2) The term includes speech pathology, or any other related service, if the service consists of specially designed instruction, at no cost to the parents, to meet the unique needs of a handicapped child, and is considered "special*

*education" rather than a "related service" under State standards.*

*(3) The term also includes vocational education if it consists of specially designed instruction, at no cost to the parents, to meet the unique needs of a handicapped child.*

The "comment" to Section 121a.14 states:

*The definition of "special education" is a particularly important one under these regulations, since a child is not handicapped unless he or she needs special education. (See the definition of "handicapped children" in section 121a.5.) The definition of "related services" (section 121a.13) also depends on this definition, since a related service must be necessary for a child to benefit from special education. Therefore, if a child does not need special education, there can be no "related services," and the child (because not "handicapped") is not covered under the Act.*

It should be noted that the above holds true for everything except physical education which, because it is part of the definition of "special education," may be extended to a handicapped child even though other forms of special education are not.

## E. Definition of Related Services

SITUATION: A special education supervisor wants to know what is meant by "related services."

RESPONSE/DOCUMENTATION: The term "related services" as used in PL 94-142 is defined in Section 121a.13 of the regulations. It means:

*...transportation and such developmental, corrective, and other supportive services as are required to assist a handicapped child to benefit from special education, and includes speech pathology and audiology, psychological services, physical and occupational therapy, recreation, early identification and assessment of disabilities in children, counseling services, and medical services for diagnostic or evaluation purposes. The term also includes school health services, social work services in schools, and parent counseling and training.*

(The terms within this definition are further defined in the same section.) The comment to Section 121a.13 states, however, that:

*The list of related services is not exhaustive and may include other developmental, corrective, or supportive services (such as artistic and cultural programs, and art, music, and dance therapy) if they are required to assist a handicapped child to benefit from special education.*

*There are certain kinds of services which might be provided by persons from varying professional backgrounds and with a variety of operational titles, depending upon requirements in individual States. For example, counseling services might be provided by social workers, psychologists, or guidance counselors; and psychological testing might be done by qualified psychological examiners, psychometrists, or psychologists, depending upon State standards.*

*Each related service defined under this part may include appropriate administrative and supervisory activities that are necessary for program-planning, management, and evaluation.*

## F. Priorities Under PL 94-142

SITUATION: A secondary school principal has asked if there are any priorities in the use of PL 94-142 funds.

RESPONSE/DOCUMENTATION: Yes. Sections 121a.320-324 require that a state use PL 94-142 funds to provide a free appropriate public education, first, to children who "*are not receiving any education*" and, second, to those children "*within each disability, with the most severe handicaps who are receiving an inadequate education.*" It should be noted, as it is in the comment to Section 121a.320, that:

> *After September 1, 1978, there should be no second priority children, since States must insure, as a condition of receiving...funds for fiscal year 1979, that all handicapped children will have available a free appropriate public education by that date.*

## G. Relationship Between PL 94-142 and Section 504

SITUATION: A teacher wants to know what the relationship is between Section 504 of the Rehabilitation Act of 1973 and PL 94-142.

RESPONSE/DOCUMENTATION: Section 504 is a civil rights law which includes a section on education. It is administered by the HEW Office for Civil Rights (OCR). PL 94-142, on the other hand, is administered by BEH. The two laws are similar in some respects and different in others, as noted below.

Appendix A -- "Analysis of Final Regulation" -- in the PL 94-142 regulations contains a section on the "Relationship Between Regulations Under Part B and Regulations Under Section 504" which states:

> *The regulations under section 504 of the Rehabilitation Act of 1973 (45 CFR Part 84; published at 42 FR 22675; May 4, 1977) deal with nondiscrimination on the basis of handicap and basically require that recipients of Federal funds provide equal opportunities to handicapped persons (for example, that they meet the needs of handicapped persons to the same extent that the needs of nonhandicapped persons are met). Subpart D of the section 504 regulations ("Preschool, Elementary, and Secondary Education") contains requirements very similar to those in Part B of the Education of the Handicapped Act.*
>
> *Basically, both require that handicapped persons be provided a free appropriate public education; that handicapped students be educated with nonhandicapped students to the extent appropriate; that educational agencies identify and locate all unserved handicapped children; that evaluation procedures be adopted to insure appropriate classification and educational services; and that procedural safeguards be established.*
>
> *In several respects, however, the section 504 regulations are broader in coverage than Part B. For example, the definition of "handicapped person" and "qualified handicapped person" under section 504 covers a broader population than the definition of "handicapped children" under Part B. Under the Part B definition, a handicapped child is a child who has one of the impairments listed in the Act, who because of that impairment requires special education and related services. Under section 504, a handicapped person is a person who has a physical or mental impairment that substantially limits one or more major life activities, has a record of that type of impairment, or is regarded as having that impairment (§84.3[j]).*

## II. PROVIDING A FREE APPROPRIATE PUBLIC EDUCATION FOR HANDICAPPED CHILDREN

### A. The Preplacement Evaluation

SITUATION: The teachers in one elementary school feel that many of their students are possible candidates for special education. They want to know how to obtain for these students the special education and related services provided by PL 94-142.

RESPONSE/DOCUMENTATION: The PL 94-142 regulations, Section 121a.531, state that:

> *Before any action is taken with respect to the initial placement of a handicapped child in a special education program, a full and individual evaluation of the child's educational needs must be conducted....*

"Evaluation" is defined previously in Section 121a.500:

> *...procedures used ... to determine whether a child is handicapped and the nature and extent of the special education and related services that the child needs. The term means procedures used selectively with an individual child and does not include basic tests administered to or procedures used with all children in a school, grade, or class.*

Local and state educational agencies must meet certain minimum requirements in conducting evaluations, as spelled out in Section 121a.532. They must ensure that:

> *(a) Tests and other evaluation materials:*
> *(1) Are provided and administered in the child's native language or other mode of communication, unless it is clearly not feasible to do so;*
> *(2) Have been validated for the specific purpose for which they are used; and*
> *(3) Are administered by trained personnel in conformance with the instructions provided by their producer;*
> *(b) Tests and other evaluation materials include those tailored to assess specific areas of educational need and not merely those which are designed to provide a single general intelligence quotient;*
> *(c) Tests are selected and administered so as best to ensure that when a test is administered to a child with impaired sensory, manual, or speaking skills, the test results accurately reflect the child's aptitude or achievement level or whatever other factors the test purports to measure, rather than reflecting the child's impaired sensory, manual, or speaking skills (except where those skills are the factors which the test purports to measure);*
> *(d) No single procedure is used as the sole criterion for determining an appropriate educational program for a child; and*
> *(e) The evaluation is made by a multidisciplinary team or group of persons, including at least one teacher or other specialist with knowledge in the area of suspected disability.*

(f) The child is assessed in all areas related to the suspected disability, including, where appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities.

The comment to this section states that:

Children who have a speech impairment as their primary handicap may not need a complete battery of assessments (e.g., psychological, physical, or adaptive behavior). However, a qualified speech-language pathologist would (1) evaluate each speech impaired child using procedures that are appropriate for the diagnosis and appraisal of speech and language disorders, and (2) where necessary, make referrals for additional assessments needed to make an appropriate placement decision.

If following the evaluation "a determination is made that a child is handicapped and needs special education and related services, an individualized education program must be developed for the child... (Section 121a.533).

A reevaluation of a handicapped child must be made at least every three years (Section 121a.534[b]).

The "Additional Procedures for Evaluating Specific Learning Disabilities" are as follows:

121a.540 Additional team members.

In evaluating a child suspected of having a specific learning disability, in addition to the requirements of 121a.532, each public agency shall include on the multidisciplinary evaluation team:

(a) (1) The child's regular teacher; or

(2) If the child does not have a regular teacher, a regular classroom teacher qualified to teach a child of his or her age; or

(3) For a child of less than school age, an individual qualified by the State educational agency to teach a child of his or her age; and

(b) At least one person qualified to conduct individual diagnostic examinations of children, such as a school psychologist, speech-language pathologist, or remedial reading teacher.

121a.541 Criteria for determining the existence of a specific learning disability.

(a) A team may determine that a child has a specific learning disability if:

(1) The child does not achieve commensurate with his or her age and ability levels in one or more of the areas listed in paragraph (a)(2) of this section, when provided with learning experiences appropriate for the child's age and ability in one or more of the following areas:

(i) Oral experssion;

(ii) Listening comprehension;

(iii) Written expression;

(iv) Basic reading skills;

*(v) Reading comprehension;*
*(vi) Mathematics calculation; or*
*(vii) Mathematics reasoning.*
*(b) The team may not identify a child as having a specific learning disability if the severe discrepancy between ability and achievement is primarily the result of:*
*(1) A visual, hearing, or motor handicap;*
*(2) Mental retardation;*
*(3) Emotional disturbance; or*
*(4) Environmental, cultural, or economic disadvantage.*

*121a.542 Observation.*

*(a) At least one team member other than the child's regular teacher shall observe the child's academic performance in the regular classroom setting.*
*(b) In the case of a child of less than school age or out of school, a team member shall observe the child in an environment appropriate for a child of that age.*

*121a.543 Written report.*

*(a) The team shall prepare a written report of the results of the evaluation.*
*(b) The report must include a statement of:*
*(1) Whether the child has a specific learning disability;*
*(2) The basis for making the determination;*
*(3) The relevant behavior noted during the observation of the child;*
*(4) The relationship of that behavior to the child's academic functioning;*
*(5) The educationally relevant medical findings, if any;*
*(6) Whether there is a severe discrepancy between achievement and ability which is not correctable without special education and related services; and*
*(7) The determination of the team concerning the effects of environmental, cultural, or economic disadvantage.*
*(c) Each team member shall certify in writing whether the report reflects his or her conclusions; the team member must submit a separable statement presenting his or her conclusions.*

## B. Evaluation Timelines

SITUATION: A teacher has referred one of his students for special education services. He was told that the child would be placed on a waiting list to be screened. The teacher wants to know if the PL 94-142 regulations contain any timelines during which evaluations must be conducted.

RESPONSE/DOCUMENTATION: There is no set timeline covering the evaluation process. However, state and local educational agencies are assumed to have been employing

the "child find" system for the period 1974-78 for the purpose of identifying and evaluating handicapped children.

One of the comments on "Protection in Evaluation Procedures" in the analysis of PL 94-142 regulations is on the question of setting timelines for the evaluation process which would include referral, evaluation, and placement. The response to this comment is as follows:

> *The Office of Education has elected to impose very few absolute timelines in the regulations for this part because of the potential administrative and legal problems they can cause. Imposing timelines can actually delay the provision of a service (for example, if the time periods are regarded as both minimum and maximum times for implementing a procedure).*
>
> *A child should be evaluated as soon as possible following referral. Any undue delay in providing the evaluation would raise the question of the State and local educational agencies' compliance with section 121a.220 (identification and evaluation of all handicapped children).*

The comment to Section 121a.300, "Timelines for Free Appropriate Public Education," in the regulations themselves, however, states that:

> *1. The requirement to make free appropriate public education available applies to all handicapped children within the State who are in the age ranges required under section 121a.300 and who need special education and related services. This includes handicapped children already in school and children with less severe handicaps, who are not covered under the priorities under 121a.321.*
>
> *2. In order to be in compliance with 121a.300, each State must insure that the requirement to identify, locate and evaluate all handicapped children is fully implemented by public agencies throughout the State. This means that before September 1, 1978, every child who has been referred or is on a waiting list for evaluation (including children in school as well as those not receiving an education) must be evaluated in accordance with §§121a.530-121a.533 of Subpart E. If, as a result of the evaluation, it is determined that a child needs special education and related services an individualized education program must be developed for the child by September 1, 1978, and all other applicable requirements of this part must be met.*
>
> *3. The requirement to identify, locate, and evaluate handicapped children (commonly referred to as the "child find system") was enacted on August 21, 1974, under Pub.L. 93-380. While each State needed time to establish and implement its child find system, the four-year period between August 21, 1974, and September 1, 1978, is considered to be sufficient to insure that the system is fully operational and effective on a Statewide basis.*
>
> *Under the statute, the age range for the child find requirement (0-21) is greater than the mandated age range for providing free appropriate public education (FAPE). One reason for the broader age requirement under "child find" is to enable States to be aware of a plan for younger children who*

*will require special education and related services. It also ties in with the full educational opportunity goal requirement, which has the same age range as child find. Moreover, while a State is not required to provide "FAPE" to handicapped children below the age ranges mandated under 121a.300, the State may, at its discretion, extend services to those children, subject to the requirements on priorities under §§121a.320-121a.324.*

## C. The Individualized Education Program (IEP)

SITUATION: Several teachers in a local school have been instructed to fill out IEP forms on their handicapped students and then give them to the children to take home for their parents to sign. The teachers want to know if the school is following the correct procedure in developing IEPs.

RESPONSE/DOCUMENTATION: No. The IEP is a written statement developed in conjunction with a meeting(s) which includes the following participants, as listed in Section 121a.344:

> *(1) A representative of the public agency other than the child's teacher, who is qualified to provide, or supervise the provision of, special education.*
> *(2) The child's teacher.*
> *(3) One or both of the child's parents....*
> *(4) The child, where appropriate.*
> *(5) Other individuals at the discretion of the parent or agency.*

If the child has been evaluated for the first time, a member of the evaluation team or some other person knowledgeable about the evaluation procedures and results must attend the IEP meeting as well (Section 121a.344[b]).

Each handicapped child must have an IEP in effect at the beginning of each school year or within 30 calendar days of a determination that the child needs special education and related services (Section 121a.343). The IEP must be implemented as soon as possible after the IEP meeting(s) and "*be in effect before special education and related services are provided to a child*" (121a.342[b][1]). Additionally, "*each public agency shall initiate and conduct meetings to periodically review each child's individualized education program and if appropriate*

*revise its provisions. A meeting must be held for this purpose at least once a year"* (Section 121a.343[d]). The IEP must include:

> *(a) A statement of the child's present levels of educational performances;*
> *(b) A statement of annual goals, including short-term instructional objectives;*
> *(c) A statement of the specific special education and related services to be provided to the child, and the extent to which the child will be able to participate in regular educational programs;*
> *(d) The projected dates for initiation of services and the anticipated duration of the services; and*
> *(e) Appropriate objective criteria and evaluation procedures and schedules for determining, on at least an annual basis, whether the short-term instructional objectives are being achieved.* [Section 121a.346]

The state educational agency is responsible for ensuring that an IEP is written for each handicapped child who:

> *(1) is placed in or referred to a private school or facility by a public agency; or*
> *(2) Is enrolled in a parochial or other private school and receives special education or related services from a public agency.*
> [Section 121a.341]

State responsibility for IEP development actually applies *"to all public agencies, including other State agencies (e.g., departments of mental health and welfare), which provide special education to a handicapped child either directly, by contract, or through other arrangements"* (comment to Section 121a.341).

## D. Teacher Involvement in the Individualized Education Program

SITUATION: In one local school district only the principal, special education teacher, and parents are involved in the development of IEPs. Several teachers have asked if they as regular classroom teachers should also be involved in this process since they are the likely recipients of these children in their classes.

RESPONSE/DOCUMENTATION: Yes. "The child's teacher" is one of the parties to be present at IEP meetings. It should be noted, however, that "teacher" is written in

the singular. The intent of Congress in passing PL 94-142 was to structure the IEP meetings so they would be small in order to ensure active, open parent involvement. The mechanism for informing and involving all direct service personnel in the implementation of IEPs is seen in the regulations as an administrative function left to the discretion of local and state agencies. Because of this, teacher associations should ensure that collective bargaining agreements, local and state PL 94-142 plans, and state laws and policies contain provisions for involvement in the IEP process of all teachers providing educational services to a handicapped child.

The NEA's position is presented within Resolution 77-33: "The classroom teacher(s) must have a major role in determining individual educational programs and should become members of school assessment teams."

The intent of Congress that the IEP meetings be small is borne out in the comment/response on "Participants in IEP Meetings" in the analysis of the regulations:

> *Comment.* A number of commenters recommended that personnel from specific disciplines be participants at IEP meetings (physicians, health care personnel, psychologists, and representatives from other agencies, such as Head Start). Some commenters felt that the meetings should include all direct service personnel who work with a handicapped child. Other commenters suggested cutting back on the number of people who participate.
>
> *Response.* The final regulations only require the participants listed in the statute except in the case of a child who has been evaluated for the first time....
>
> Generally, having a large group of people at an IEP meeting may be unproductive and very costly, and could essentially defeat the purpose of insuring active, open parent involvement.
>
> While it is necessary to insure that all direct service personnel who work with a handicapped child are informed about and involved in implementing the child's IEP, this does not mean that they should attend the IEP meetings. The mechanism for insuring the involvement of all IEP implementers is left to the discretion of each agency (e.g., the child's teacher, or principal, or supervisor could have that responsibility). However, this is a basic administrative procedure which can be handled outside of the context of the IEP meeting....
>
> While very large IEP meetings might generally be inappropriate, there may be specific instances where additional participants are essential. In order to enable other persons to be included, the Office of Education retained a provision from the proposed rules which authorized the attendance of "other participants, at the discretion of the agency or parents."

The question thus becomes one of which teacher -- the regular classroom teacher, the special education teacher, the English teacher, etc. -- should be the one to sit in on the IEP meeting. The comment to 121a.344 sheds some light on this:

> *1. In deciding which teacher will participate in meetings on a child's individualized education program, the agency may wish to consider the following possibilities:*
> *(a) For a handicapped child who is receiving special education, the "teacher" could be the child's special education teacher. If the child's handicap is a speech impairment, the "teacher" could be the speech-language pathologist.*
> *(b) For a handicapped child who is being considered for placement in special education, the "teacher" could be the child's regular teacher or a teacher qualified to provide education in the type of program in which the child may be placed, or both.*
> *(c) If the child is not in school or has more than one teacher, the agency may designate which teacher will participate in the meeting.*
> *2. Either the teacher or the agency representative should be qualified in the area of the child's suspected disability.*
> *3. For the child whose primary handicap is a speech impairment, the evaluation personnel participating...would normally be the speech-language pathologist.*

The question of teacher involvement in IEP meetings has implications for negotiated agreements on extra duties and compensation and for "teacher accountability." The comment/response on "Collective Bargaining" in the analysis of PL 94-142 regulations is pertinent:

> *Comment: Numerous commenters recommended that the regulations deal with the fact that the required participation of teachers (and other agency staff) in the meetings to develop IEPs would require modification of collective bargaining agreements. Some commenters urged that the regulations require additional compensation for teachers to participate in these meetings prescribe or limit any after-school-hours participation, and specify arrangements for relieving teachers from classroom duties for the meetings.*
>
> *Response: No change has been made in the regulation. The requirement for teacher participation in developing IEPs is statutory. The Commissioner understands that collective bargaining agreements and individual annual contracts for teachers vary greatly among local education agencies and may or may not deal with additional duties and compensation for after-hours activities. In some instances, especially in urbanized and highly unionized areas, collective bargaining agreements may have to be renegotiated to cover employee participation in IEPs. However, this is an area which is solely within the authority of the public agency and its employees (and their union representative, if any). It would be inappropriate and beyond the scope of the Commissioner's authority to prescribe how this requirement must be met. Where collective bargaining agreements must be modified, the public agency must negotiate the appropriate modifications to comply with the statute. The public agency is also responsible for insuring that the IEP meetings are conducted at a time reasonably conven-*

> *ient to parents. (In some cases this may be during school hours.) The agency also must make its own arrangements for covering classrooms when teachers are absent.*

Section 121a.349 of the PL-142 regulations has the following to say about teacher accountability:

> *...each public agency must provide special education and related services to a handicapped child in accordance with an individualized education program. However...the Act does not require that any agency, teacher, or other person be held accountable if a child does not achieve the growth projected in the annual goals and objectives.*

The Comment on this same section notes further:

> *This section is intended to relieve concerns that the individualized education program constitutes a guarantee by the public agency and the teacher that a child will progress at a specified rate. However, this section does not relieve agencies and teachers from making good faith efforts to assist the child in achieving the objectives and goals listed in the individualized education program. Further, the section does not limit a parent's right to complain and ask for revisions of the child's program, or to invoke due process procedures, if the parent feels that these efforts are not being made.*

The PL 94-142 regulations do not address such questions as these: What procedures should the teacher follow when he or she disagrees with the contents of the IEP and/or the placement of a handicapped child? Does the teacher have the right to call for an IEP meeting? Can a teacher refuse the placement of a handicapped child in his or her classroom? And although Section 121a.534(b) gives the teacher the right to request a reevaluation of the child, this would be a complete re-assessment and testing of the child rather than a reevaluation of the IEP itself. Section 121a.534(b) in its entirety reads:

> *That an evaluation of the child, based on procedures which meet the requirements under §121a.532, is conducted every three years or more frequently if conditions warrant or if the child's parent or teacher requests an evaluation.*

The NEA has published or is preparing numerous pieces which address the collective bargaining implications of the teacher's participation in IEP meetings and in the education of handicapped children. "PL 94-142: Negotiations Impact" is currently available from NEA/IPD.

## E. Placement in a Least Restrictive Environment

SITUATION: Several teachers are participating in IEP meetings. They want to know how they decide the placement of handicapped children in a "least restrictive environment."

RESPONSE/DOCUMENTATION: There is no one least restrictive environment. These decisions must be made on an individual basis by the persons who are in attendance at the IEP meetings. Factors which must be considered in deciding placement are in PL 94-142 regulations. Section 121a.550 specifies that to provide an education in the least restrictive environment for handicapped students school districts shall ensure:

> *(1) That to the maximum extent appropriate, handicapped children, including children in public or private institutions or other care facilities, are educated with children who are not handicapped, and*
> *(2) That special classes, separate schooling or other removal of handicapped children from the regular educational environment occurs only when the nature or severity of the handicap is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.*

The comment to Section 121a.552, on placements, lists additional important factors that should be considered:

> *The overriding rule in this section is that placement decisions must be made on an individual basis. The section also requires each agency to have various alternative placements available* [instruction in regular classes, special schools, home instruction, and instruction in hospitals and institutions] *in order to insure that each handicapped child receives an education which is appropriate to his or her individual needs.*
>
> *The analysis of the regulations for Section 504 of the Rehabilitation Act of 1973 (45 CFR Part 84 -- Appendix, Paragraph 24) includes several points regarding educational placements of handicapped children which are pertinent to this section:*
>
> *1. With respect to determining proper placements, the analysis states: "...it should be stressed that, where a handicapped child is so disruptive in a regular classroom that the education of other students is significantly impaired, the needs of the handicapped child cannot be met in that environment. Therefore regular placement would not be appropriate to his or her needs...."*
>
> *2. With respect to placing a handicapped child in an alternate setting, the analysis states that among the factors to be considered in placing a*

> *child is the need to place the child as close to home as possible. Recipients are required to take this factor into account in making placement decisions. The parents' right to challenge the placement of their child extends not only to placement in special classes or separate schools, but also to placement in a distant school, particularly in a residential program. An equally appropriate education program may exist closer to home; and this issue may be raised by the parent under the due process provisions of this subpart.*

In interpreting evaluation data with the aim of reaching placement decisions, each public agency shall:

> *(1) Draw upon information from a variety of sources, including aptitude and achievement tests, teacher recommendations, physical condition, social or cultural background, and adaptive behavior;*
> *(2) Insure that information obtained from all of these sources is documented and carefully considered;*
> *(3) Insure that the placement decision is made by a group of persons, including persons knowledgeable about the child, the meaning of the evaluation data, and the placement options; and*
> *(4) Insure that the placement decision is made in conformity with the least restrictive environment rules....*[Section 121a.533]

Finally, the public agency shall also ensure that the placement decision for a handicapped child:

> *(1) Is determined at least annually,*
> *(2) Is based on his or her individualized education program, and*
> *(3) Is as close as possible to the child's home....*[Section 121a.552(a)]

Teachers should be aware of the fact that the "least restrictive environment" provision of PL 94-142 extends to nonacademic and extracurricular services and activities such as

> *...counseling services, athletics, transportation, health services, recreational activities, special interest groups or clubs sponsored by the public agency, referrals to agencies which provide assistance to handicapped persons, and employment of students, including both employment by the public agency and assistance in making outside employment available.* [Section 121a.306]

Many persons refer to the education of handicapped children in regular classrooms as "mainstreaming," but the word does not appear either in PL 94-142 or the regulations. We discourage its use because of misunderstanding about what the term means. It cannot be emphasized enough that the intent of PL 94-142 is not wholesale "mainstreaming" of handicapped students into regular classrooms but rather their placement

in a "least restrictive environment" which consists of extending to them special education and related services along a continuum of possible placements.

F. Teacher Appeal of Placement or IEP

SITUATION: A handicapped child who is highly disruptive has been placed in a seventh-grade class and is making the class a nightmare both for the teacher and for the other students. The parents insisted that this child be placed in a regular classroom and the school board has supported them in this request. The teacher would like to know what appeal procedure is available to her.

RESPONSE/DOCUMENTATION: The PL 94-142 regulations do not address the question of the teacher's right to appeal the placement of a handicapped child. (The NEA believes teachers should have such right, as stated in Resolution 77-33: "The classroom teacher(s) should have an appeal procedure regarding the implementation of the program, especially in terms of student placement.") State and local agencies, however, have the option -- through law, state educational agency policy, or collective bargaining agreements -- of adopting provisions exceeding the requirements of the PL 94-142 law and regulations, which after all are minimum standards to be met. California Assembly Bill 1250 (Sect. 20.56330[b]), for example, provides for teacher appeals in IEP implementation procedures, which should:

> ...include a process for a teacher to obtain a special review of the placement of an individual with exceptional needs in his or her class. Such procedures shall include, but not be limited to, a description of when such special review may be requested, what personnel will provide such special review, and a timetable for completion of a special review.

PL 94-142 regulations Section 121a.505(a) says two parties have the right to request an impartial due process hearing and review of such hearings -- the parents and the school district:

> *...A parent or a public educational agency may initiate a hearing on any of the matters described in §121a.504(a)(1) and (2).*

The reference is to a school district's proposal or refusal to:

> *...initiate or change the identification, evaluation, or educational placement of the child or the provision of a free appropriate public education to the child.*

The NEA/IPD contacted BEH on this point, citing Section 615(c) of Public Law 94-142 and requesting a clarification of who is included in the term "any party" which is used therein. Section 615(c) reads:

> *If the hearing required in paragraph (2) of subsection (b) of this section is conducted by a local educational agency or an intermediate educational unit, any party aggrieved by the findings and decision rendered in such a hearing may appeal to the State educational agency which shall conduct an impartial review of such hearing. The officer conducting such review shall make an independent decision upon completion of such review.*

The BEH response was, again, that the parents and school district are the only two parties having appeal rights under PL 94-142. A clarification of the term "any party" might be the subject of a test case.

## G. Physical Education for the Handicapped

SITUATION: A high school physical education teacher has been told that a severely orthopedically impaired student has been placed in her third-period gym class. The school does not have the proper facilities and equipment for this student. The teacher would like to know what PL 94-142 says about the provision of physical education for handicapped students.

RESPONSE/DOCUMENTATION: This type of situation should never occur. A child who is severely orthopedically impaired will need specially designed physical education.

PL 94-142 clearly mandates that physical education be available to handicapped children. In fact, physical education is built into the definition of "special education." Thus if a child needs specially designed physical education even though no other special education or related services are called for, then he/she can be counted under PL 94-142. The regulations, however, do differentiate between "regular"

and "special" physical education. Section 121a.307 and the comment following it state:

> (a) General. Physical education services, specially designed if necessary, must be made available to every handicapped child receiving a free appropriate public education.
> (b) Regular physical education. Each handicapped child must be afforded the opportunity to participate in the regular physical education program available to nonhandicapped children unless:
> (1) The child is enrolled full time in a separate facility; or
> (2) The child needs specially designed physical education, as prescribed in the child's individualized education program.
> (c) Special physical education. If specially designed physical education is prescribed in a child's individualized education program, the public agency responsible for the education of that child shall provide the service directly, or make arrangements for it to be provided through other public or private programs.
> (d) Education in separate facilities. The public agency responsible for the education of a handicapped child who is enrolled in a separate facility shall insure that the child receives appropriate physical education services in compliance with paragraphs (a) and (c) of this section.
>
> Comment: The Report of the House of Representatives on Pub. L. 94-142 includes the following statement regarding physical education:
>
> Special education as set forth in the Committee bill includes instruction in physical education, which is provided as a matter of course to all non-handicapped children enrolled in public elementary and secondary schools.
>
> The Committee is concerned that although these services are available to and required of all children in our school systems, they are often viewed as a luxury for handicapped children.
>
> The Committee expects the Commissioner of Education to take whatever action is necessary to assure that physical education services are available to all handicapped children, and has specifically included physical education within the definition of special education to make clear that the Committee expects such services specially designed where necessary to be provided as an integral part of the educational program of every handicapped child.

## H. Learning Materials

SITUATION: A high school social studies teacher is expected to teach civics to two students with visual and motor deficiencies. He has no materials that are suitable for these students.

RESPONSE/DOCUMENTATION: Both PL 94-142 and Section 504 speak to the question of learning materials. The NEA's position on learning materials for the handicapped, in Resolution 77-33, is that "the appropriateness of educational methods, materials, and supportive services must be determined in cooperation with classroom teachers." The analysis of the final regulations for Section 504 of the Rehabilitation Act of 1973 -- in Subpart D, "Preschool, Elementary, and Secondary Education," Item 23, "Free Appropriate Public Education" -- States:

> *The quality of the educational services provided to handicapped students must equal that of the services provided to nonhandicapped students; thus, handicapped students' teachers must be trained in the instruction of persons with the handicap in question and appropriate materials and equipment must be available.*

Certainly PL 94-142 funds may be used for the purchase of learning materials. State education agencies may also, according to the regulations:

> *...enter into contracts with institutions of higher education, local education agencies or other agencies, institutions, or organizations (which may include parent, handicapped, or other advocacy organizations) to carry out...development or modification of instructional materials* ....[Section 121a.382(d)]

## I. School District Liability for Educational Services Under PL 94-142

SITUATION: A school superintendent is concerned over the district's possible liability for not providing the services listed in the IEPs. He wants to know if the district is in fact liable.

RESPONSE/DOCUMENTATION: Yes. On November 17, 1977, the Bureau of Education for the Handicapped sent a letter to all chief state school officers clarifying its position on IEP content. The letter stated that PL 94-142 and Section 504 "require that by September 1, 1978, each handicapped child must be provided all services necessary to meet his/her special education and related needs." The entire text of the letter follows.

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
OFFICE OF EDUCATION
WASHINGTON, D.C. 20202

November 17, 1977

Our Reference: DAS Bulletin #5

INFORMAL LETTER TO CHIEF STATE SCHOOL OFFICERS

Subject: Clarification of BEH Position on IEP Content

The purpose of this letter is to clarify the position of the Bureau of Education for the Handicapped (BEH) regarding the content of the individualized education program (IEP).

In the final regulations, BEH elected to adopt substantially verbatim the statutory language on IEP content and to delete additional details that were included in the proposed rules. As a result of this change, some parties have interpreted the final regulations to mean that a public agency must provide to a handicapped child only those services which are available in the agency. This interpretation is not correct.

Although the wording on IEP content was changed in the final regulations, our position on the critical issues of need and required services for individual handicapped children has not been altered. We do not wish to change this basic position and, under the statute and extensive legislative history on IEPs, we have no authority to do so.

The following explains the reason for changing the wording on IEP content in the final regulations, and describes the basic IEP process set out in the statute and final rules.

Reason for Wording in Final Regulations. The proposed rules (1) provided that each handicapped child's IEP must include a statement of specific educational services needed by the child (determined without regard to the availability of those services), and (2) contained extensive details which went beyond the wording in the statute. These statements were included to provide assistance and direction to agencies in implementing the IEP requirement.

In reviewing the letters received during the public comment period, BEH found that there were few, if any, comments which specifically supported the inclusion of the additional details. On the other hand, many commenters expressed concerns about over-regulation and felt that these requirements were unnecessarily burdensome. Moreover, some commenters felt that agencies could be faced with the prospect of a deluge of inappropriate needs for which they would be bound to provide services.

BEH was concerned that the additional details could have a negative effect on the implementation of the IEP requirement. Therefore, the decision was made to return to the statutory language and to allow some experience and research on how agencies implement the IEP requirement before deciding whether more detailed regulations would be needed. However, this does not mean that a handicapped child may be provided services at some lesser level than that required by the law.

Basic IEP Process. The following are basic steps and procedures involved in developing and implementing an IEP for a handicapped child:

(1) The evaluation process (as set out in sections 121a.530 to 121a.534 of the regulations) is the first step in determining a child's need for special education and related services.

(2) An IEP meeting is conducted to develop a written statement for each handicapped child, including a statement of the specific special education and related services to be provided to the child. (NOTE: As defined in the statute, the term "special education" means specially designed instruction to meet the unique needs of a handicapped child. The term "related services" means transportation and such developmental, corrective, and other supportive services as are required to assist a handicapped child to benefit from special education. . .)

(3) Since the parents participate in the development of the IEP for their child, they have the option to accept or reject the services that are proposed. If the parents are not satisfied, they may protest and must be provided an opportunity for an impartial due process hearing.

NOTE: The exact nature and extent of services to be provided to individual handicapped children are educational judgement questions which must be determined through the IEP process and, where necessary, through the due process procedures set out in the regulations. These specific educational judgement questions generally cannot be considered or resolved at the Federal level.

FAPE Requirement under Part B and Section 504. Under Part B and section 504 of the Rehabilitation Act of 1973, each public agency must provide a free appropriate public education (FAPE) to its handicapped children. The following is a brief description of the FAPE requirements under these two statutes, particularly with respect to the provision of an appropriate education:

The regulations under Section 504 (45 CFR Part 84) state that an appropriate education ". . . is the provision of regular or special education and related aids and services that (i) are designed to meet the individual educational needs of handicapped persons as adequately as the needs of non-handicapped persons are met and (ii) are based upon adherence to procedures that satisfy the requirements of sections 84.34 (Educational setting), 84.35 (Evaluation and placement), and 84.36 (Procedural safeguards)."

The Section 504 regulations also require recipients to achieve full compliance with the FAPE requirements of section 84.33 as expeditiously as possible, but in no event later than September 1, 1978.

Under Part B, "FAPE" means special education and related services which are provided in conformity with an IEP. The timelines for FAPE are the same for both Part B and Section 504.

Read together, these two statutes and their implementing regulations require that by September 1, 1978, each handicapped child must be provided all services necessary to meet his/her special education and related needs.

If you have any comments or questions about this letter, or if we can be helpful to your State in implementing the IEP requirements, please let us know.

Sincerely,

Edwin W. Martin Deputy Commissioner
Bureau of Education for the
Handicapped

cc: State Directors of Special Education
Part B Coordinators

## III. SPECIAL TEACHER CONCERNS ABOUT PL 94-142

### A. Class Size

SITUATION: A third-grade teacher, who is known to be especially talented with difficult students, has just had three handicapped students assigned to her class of 26 children, bringing the total of the class to 29. The teacher has asked whether PL 94-142 contains any provision for a reduced class size.

RESPONSE/DOCUMENTATION: No. But teachers should be aware that the PL 94-142 regulations do authorize the use of supplementary aids and services to assist teachers with large classes and handicapped students who need a lot of individual attention. A comment/response on "least restrictive environment" provisions, which appears in the analysis of PL 94-142 regulations, states:

> *Comment:* A number of commenters requested that provisions be made for special support in the regular classroom in order to accommodate handicapped children (e.g., including reducing the pupil-teacher ratio and assigning aides to the room).
>
> *Response:* No change was made, since the statute already authorizes the use of supplementary aids and services as a means of enabling a handicapped child to be educated with nonhandicapped children.

The NEA memo on "PL 94-142: Negotiations Impact" states the following regarding the question of class size:

> A large number of pupils in a classroom precludes the individualized instruction which most handicapped students will require. It is important to realize that, because of the special needs of students placed in a regular classroom for the first time as a result of PL 94-142, simply counting the number of students may not adequately reflect the demands placed upon the teacher in terms of work load. Another method, recently developed, of more accurately ascertaining class work load may be more appropriate.
>
> Both the Lodi (California) Education Association and the Denver Classroom Teachers Association have implemented a system of limiting a teacher's class work load by means of a formula which assigns weighted values to students according to the difficulty and demands they present in a classroom environment. For instance, a maximum point value per class is established contractually, and numerical class size may vary depending upon the nature of the students: a normal pupil counts as 1; a gifted or slow learner as 1.5; a child with low intelligence or a discipline problem as 2; and an emotionally disturbed or non-English-speaking

student at 2.5. If the maximum value per class is exceeded, the class receives some form of special assistance, such as teacher aides or special support personnel. This system could be used effectively when handicapped students are integrated into the regular classroom, provided appropriate index values for students can be negotiated.

(The criticism against class size formulas such as Lodi or Denver are that they are just one more way of stigmatizing children who have for too long been labeled "different."[1])

Another possibility would involve the reduction or elimination of extra duty for teachers with classes which have become more difficult because they contain handicapped students. Assignment to these teachers of homeroom, corridor, playground, bus or cafeteria duty or of extracurricular chores such as chaperoning could then be curtailed. The provision of released time to teachers where work load has increased because of PL 94-142 could also be negotiated.

B. Personnel

SITUATION: A junior high school has 42 students with learning disabilities (LD) enrolled in the school and no teaching specialist on the staff or even available on a part-time basis. The teachers want to know if additional staff can be secured under PL 94-142.

RESPONSE/DOCUMENTATION: Yes, additional staff may be secured with PL 94-142 funds. The real issue, however, is not money but the fact that handicapped students must be served. The comment to Section 121a.321 in the PL 94-142 regulations reads:

> *...After September 1, 1978, Part B funds may be used...to meet the full educational opportunities goal...including employing additional personnel....*

Teacher associations should become involved in development of both the local and state PL 94-142 plans for the ensuing year to ensure that appropriate personnel are available.

---

[1]The Report of the Class Size Committee, Lodi Education Association, is available from NEA Instruction and Professional Development.

Whether or not PL 94-142 funds are used, a local district must take steps to ensure that special education and related services are provided to handicapped children. Otherwise the district would be in violation of both Section 504 of the Rehabilitation Act of 1973 and PL 94-142. Section 84.33 ("Free Appropriate Public Education") of the Section 504 regulations states:

> *(a) General. A recipient that operates a public elementary or secondary education program shall provide a free appropriate public education to each qualified handicapped person who is in the recipient's jurisdiction, regardless of the nature or severity of the person's handicap.*
> *(b) Appropriate education...the provision of an appropriate education is the provision of regular or special education and related aids and services....*

(It should be noted that there are no funds available under Section 504). As a condition for receiving funds under PL 94-142, a state must assure in its annual program plan that all handicapped children will receive special education and related services regardless of the amount of federal funds available. Section 121a.121 ("Right to a Free Appropriate Public Education") in the regulations reads:

> *(a) Each annual program plan must include information which shows that the State has in effect a policy which insures that all handicapped children have the right to a free appropriate public education....*

Parents' complaints regarding the lack of provision of a free appropriate public education for their handicapped children should bring immediate action. Teachers and their organizations may also complain under Section 121a.502 of the PL 94-142 regulations. (See the next section, "Teacher Complaint Procedure.")

## C. Teacher Complaint Procedure

SITUATION: One teacher has become very upset with the manner in which his district is implementing the law. He would like to know if there is a procedure through which, or any agency to which, he can report the violations that are occurring.

RESPONSE/DOCUMENTATION: Yes. There are many avenues available to teachers. Some of these are: reporting the incident to the state or national association for

resolution through their contacts with the state departments of education or BEH, reporting to parent/advocacy groups with which the association has formed an alliance, filing a grievance under a local collective bargaining agreement, using political pressure, and using the complaint procedure provided in PL 94-142 regulations Section 121a.602.

On February 27, 1978, NEA/IPD received a letter from BEH in response to an inquiry about reporting violations. The letter is reproduced on page 27.

### D. Attitudes of Regular Students

SITUATION: A junior high school teacher recognizes that peer group relationships are of paramount importance to teenagers. The teacher has seen the "normal" kids ridicule their less able classmates even though the latter are making passing grades. He is concerned that PL 94-142 may have an adverse effect in some cases.

RESPONSE: Ridicule is an insidious form of discrimination and teachers should not tolerate it under any circumstances. The NEA recognizes that to implement PL 94-142 effectively "a favorable learning experience must be created both for handicapped and nonhandicapped students," that "all staff must be adequately prepared for their roles through in-service training and retraining," and that "all students must be adequately prepared for the program" (Resolution 77-33). The individual teacher's behavior sets the mode in the classroom and he or she has an important role to play in the attitude changes which must occur there. Teacher associations also have an important role in changing the attitudes of many teachers.

### E. Accessibility of Educational Program

SITUATION: A teacher has a handicapped student who must be lifted on and off the toilet as well as helped up the stairs to the classroom. The teacher wants to know

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
OFFICE OF EDUCATION
WASHINGTON, D.C. 20202

FEB 27 1978

Dr. John Sullivan
Director, Instruction and Professional
Development (IPD)
National Education Association
1201 16th Street, N.W.
Washington, D. C. 20036

Dear Dr. Sullivan:

Thank you for your February 8 letter, in which you asked about the proper procedure for reporting possible violations under Part B of the Education of the Handicapped Act, as amended by P.L. 94-142.

The appropriate procedure to follow is to bring such matters to the attention of State educational agency officials. As noted in your letter, Section 121a.602 of the regulations requires each State educational agency to adopt "effective procedures for reviewing, investigating, and acting on any allegations of substance, which may be made by public agencies, or private individuals, or organizations, of actions taken by any public agency that are contrary to the requirements of this part."

We would appreciate receiving copies of any complaints that are submitted by your constituents under this procedure. We will follow up on these complaints by contacting the State educational agency; and, where warranted, we will conduct a compliance investigation.

Complaints should be submitted to our State Policy and Administrative Review (SPAR) Branch in our Bureau, at the following address: Bureau of Education for the Handicapped, 400 Maryland Avenue, S. W., (Room 4826 Donohoe Building), Washington, D. C. 20202.

Mr. Irvin will be contacting members of your staff in the near future regarding the final draft of your Part B guide.

We sincerely appreciate your interest in insuring the effective implementation of the Education for All Handicapped Children Act of 1975. If our office can be of further assistance to you in this matter, please let us know.

Sincerely yours,

Edwin W. Martin
Deputy Commissioner
Bureau of Education for the
Handicapped

if transportation and physical assistance for a handicapped student in getting around the school are covered by PL 94-142.

RESPONSE/DOCUMENTATION: Yes. Transportation is one of the "related services" under PL 94-142 and includes:

> *(i) Travel to and from school and between schools,*
> *(ii) Travel in and around school buildings, and*
> *(iii) Specialized equipment (such as special or adapted buses, lifts, and ramps), if required to provide special transportation for a handicapped child.* [Section 121a.13(b)(13)]

Again, the response to a request for special support in the classroom, as noted in the analysis of regulations, is applicable:

> *...The statute already authorizes the use of supplementary aids and services as a means of enabling a handicapped child to be educated with nonhandicapped children.*

Additional staff, including teacher aides, may be hired by the school district after September 1, 1978 (Item 3, comment to Section 121a.321).

## F. Coordination of Regular and Special Education Programs

SITUATION: The children with exceptional needs in one teacher's class are out of his room for several periods a day. The teacher wants to know if there is any provision for coordination of handicapped students' education programs between special education and regular teachers.

RESPONSE/DOCUMENTATION: The PL 94-142 regulations do not address this issue. The assumption is that the local district is responsible for assuring coordination between regular and special education. Thus the burden may be on the teacher association to monitor this.

Opportunities for consultation and cooperation between the classroom teacher and special education teacher occur during the initial evaluation of the child, during the development of the IEP, and at meetings during the year when a child's

progress toward his or her IEP goals and objectives is assessed. Local school districts, however, may at their own discretion determine teacher involvement in IEP meetings. The comments on participants in IEP meetings and on collective bargaining found in the analysis of PL 94-142 regulations are again pertinent. The comment on participants in IEP meetings states:

> *While it is necessary to insure that all direct services personnel who work with a handicapped child are informed about and involved in implementing the child's IEP, this does not mean that they should attend the IEP meetings. The mechanism for insuring the involvement of all IEP implementers is left to the discretion of each agency (e.g., the child's teacher, or principal, or supervisor could have that responsibility). However, this is a basic administrative procedure which can be handled outside the context of the IEP meeting.*

From the comment/response on collective bargaining:

> *The requirement for teacher participation in developing IEPs is statutory. The Commissioner understands that collective bargaining agreements and individual annual contracts for teachers vary greatly among local educational agencies and may or may not deal with additional duties and compensation for after-hours activities. In some instances, especially in urbanized and highly unionized areas, collective bargaining agreements may have to be renegotiated to cover employee participation in IEPs. However, this is an area which is solely within the authority of the public agency and its employees (and their union representative, if any).*

Local teacher associations, then, have a critical role to play in initiating appropriate collective bargaining provisions.

## G. In-service Education

SITUATION: Teachers in a local school district are very upset over their lack of training to educate handicapped children in their classrooms. They ask, "Doesn't PL 94-142 include teacher training?"

RESPONSE/DOCUMENTATION: Yes, PL 94-142 does require that "*a comprehensive system of staff development*" occur in each state participating in PL 94-142. The analysis of regulations for PL 94-142 says, "*The statute is very clear in requiring that a 'comprehensive system of personnel development' be implemented in each state.*" Each local district must include in its application "*procedures for the implementation*

*and use of the comprehensive system of personnel development established by the State..."* (Section 121a.224). Teachers and their associations should ensure that they are involved in the development of the local plan. There is a public comment period also, during which they may respond to the proposed annual plan which has been developed by the district (Section 121a.234).

The comprehensive system of personnel development includes:

> *(a) The in-service training of general and special educational instructional, related services, and support personnel;*
> *(b) Procedures to insure that all personnel necessary to carry out the purposes of the Act are qualified...*[in other words, that personnel are certified, licensed, registered, or have met other comparable requirements -- see Section 121a.12] *and that activities sufficient to carry out this personnel development plan are scheduled; and*
> *(c) Effective procedures for acquiring and disseminating to teachers and administrators of programs for handicapped children significant information derived from educational research, demonstration, and similar projects, and for adopting, where appropriate, promising educational practices and materials developed through those projects.* [Section 121a.380]

Teacher participation in the comprehensive personnel development system is provided under Section 121a.381(a):

> *The State educational agency must insure that all public and private institutions of higher education, and other agencies and organizations (including representatives of handicapped, parent, and other advocacy organizations) in the State which have an interest in the preparation of personnel for the education of handicapped children, have an opportunity to participate fully in the development, review, and annual updating of the comprehensive system of personnel development.*

Each state must also ensure:

> *...that ongoing in-service training programs are available to all personnel who are engaged in the education of handicapped children, and that these programs include:*
> *(1) The use of incentives which insure participation by teachers (such as released time, payment for participation, options for academic credit salary step credit, certification renewal, or updating professional skills).* [Section 121a.382 (e)]

The State must conduct an annual needs assessment on which to base the in-service program, identify the areas in which training is needed, specify the groups needing training, describe the content and nature of the training for each area, and describe how the training will be provided, the funding sources, and the time frame

(Section 121a.382[f]). It may also:

> *...enter into contracts with institutions of higher education, local educational agencies or other agencies, institutions, or organizations (which may include parent, handicapped, or other advocacy organizations) to carry out:*
> *(1) Experimental or innovative personnel development programs*
> *(2) Development or modification of instructional materials; and*
> *(3) Dissemination of significant information derived from educational research and demonstration projects.* [Section 121a.382(d)]

## H. Teacher Association Involvement In Implementation of PL 94-142

SITUATION: The president of a local teacher association feels that PL 94-142 is a good law. She wants to know how she and other association leaders and staff can become involved in its implementation.

RESPONSE/DOCUMENTATION: The NEA supported the passage of PL 94-142 and is committed to help make the law work equitably for teachers and students alike. The Association's goals for its implementation are contained in NEA Resolution 77-33, which provides affiliates some direction for action:

> The National Education Association supports a free appropriate public education for all handicapped students in a least restrictive environment which is determined by maximum teacher involvement. However, the Association recognizes that to implement Public Law 94-142 effectively --
> a. A favorable learning experience must be created both for handicapped and nonhandicapped students.
> b. Regular and special education teachers and administrators must share equally in planning and implementation for the disabled.
> c. All staff should be adequately prepared for their roles through in-service training and retraining.
> d. All students should be adequately prepared for the program.
> e. The appropriateness of educational methods, materials, and supportive services must be determined in cooperation with classroom teachers.
> f. The classroom teacher(s) should have an appeal procedure regarding the implementation of the program, especially in terms of student placement.
> g. Modifications should be made in class size, using a weighted formula, scheduling, and curriculum design to accommodate the demands of the program.
> h. There must be a systematic evaluation and reporting of program developments using a plan which recognizes individual differences.
> i. Adequate funding must be provided and then used exclusively for this program.

j. The classroom teacher(s) must have a major role in determining individual educational programs and should become members of school assessment teams.
k. Adequate released time must be made available for teachers so that they can carry out the increased demands upon them.
l. Staff reduction will not result from implementation of the program.
m. Additional benefits negotiated for handicapped students through local collective bargaining agreements must be honored.
n. Communication among all involved parties is essential to the success of the program.

Some of the specific ways in which state and local teacher associations can be involved in the implementation of PL 94-142 are listed below.

1. Recommend teacher representatives to serve on the mandated state advisory panel (which is appointed by the state governor or other legally authorized official) and send other representatives to panel meetings.

Section 121a.651 in the PL 94-142 regulations says that the state advisory panel:

> *...must be composed of persons involved in or concerned with the education of handicapped children. The membership must include at least one person representative of each of the following groups:*
> *(1) Handicapped individuals.*
> *(2) Teachers of handicapped children.*
> *(3) Parents of handicapped children.*
> *(4) State and local education officials.*
> *(5) Special education program administrators.*

The state has the option of expanding the membership beyond these specific groups. The comment to 121a.651 is particularly relevant with respect to composition of the advisory panel:

> *Comment. The membership of the State advisory panel...is required in section 613(a)(12) of the Act. As indicated...the composition of the panel and the number of members may be expanded at the discretion of the State. In adding to the membership, consideration could be given to having:*
> *(1) An appropriate balance between professional groups and consumers (i.e., parents, advocates, and handicapped individuals);*
> *(2) Broad representation within the consumer-advocate groups, to insure that the interests and points of view of various parents, advocates and handicapped individuals are appropriately represented;*
> *(3) Broad representation within professional groups (e.g., (a) regular education personnel, (b) special educators, including teachers, teacher trainers, and administrators, who can properly represent various dimensions in the education of handicapped children, and (c) appropriate related services personnel); and*

(4) Representatives from other State advisory panels (such as vocational education).

If a State elects to maintain a small advisory panel (e.g., 10-15 members), the panel itself could take steps to insure that it (1) consults with and receives inputs from various consumer and special interest professional groups, and (2) establishes committees for particular short-term purposes composed of representatives from those input groups.

The functions of the state advisory panel are to:

(a) Advise the State educational agency of unmet needs within the State in the education of handicapped children;
(b) Comment publicly on the State annual program plan and rules or regulations proposed for issuance by the State regarding the education of handicapped children and the procedures for distribution of funds under this part; and
(c) Assist the State in developing and reporting such information and evaluation as may assist the Commissioner in the performance of his responsibilities....[Section 121a.652]

It should be noted further that:

All advisory panel meetings and agenda items must be publicly announced prior to the meeting, and meetings must be open to the public. [Section 121a.653(b)]

2. Participate in state and local hearings or other arrangements for public involvement.

Prior to the adoption of the local and state plans education agencies must make their plans available to the general public for comment. State education agencies are required to hold a public hearing for this purpose. See Sections 121a.280-284 of the regulations for further details on public notice, comment period, review of public comments, and publication and availability of approved plans. Although local education agencies are "not required to hold public hearings" as such, they are required to "use methods for public participation" within their jurisdictions which are comparable to those required of the state (Section 121a.234).

3. Participate in designing, implementing, and evaluating the local and state comprehensive staff development programs and assure that teacher training is an ongoing activity.

4. Negotiate collective bargaining agreements or policy provisions which provide for teachers' participation in IEPs and in the comprehensive staff development program, for adequate staff planning and coordination time, and for the right of teachers to appeal placements of handicapped students.

5. Negotiate collective bargaining agreements or policy provisions which provide procedural due process rights for teachers and ensure that their participation in IEP meetings and in-service education is covered through released time, payment, or some other form of compensation.

6. Participate in state and federal site visits for the purpose of evaluating and monitoring implementation of PL 94-142.

BEH visits about half the states each year. In a January 3, 1978, letter to the executive director of the Jefferson County (Kentucky) Teachers Association, the late Daniel Ringleheim, then director of the BEH Division of Assistance to States, said, "I have instructed the administrative review teams to honor all requests for input from teacher organizations." NEA/IPD informed all state affiliates of the schedule of BEH visits for 1977-78 and will do so for coming years.

7. Establish the association's own ongoing monitoring program to keep abreast of problems relating to PL 94-142.

The Georgia Association of Educators (3951 Snapfinger Blvd., Decatur 30035) has prepared a "PL 94-142 Report Form" for teacher use in reporting a problem to the UniServ office. This is an excellent way to monitor implementation of the law. There are many questions about PL 94-142 for which there are no answers at this time. More than likely they will come through local initiative and action which move state and national agencies to respond.

8. Form coalitions with parent and/or advocacy groups as needed to ensure that a free appropriate education is provided for all handicapped children and that PL 94-142 is justly and equitably interpreted.

9. A critical item for the agenda of all local and state teacher associations -- lobby for increased federal funding of PL 94-142.

## IV. RIGHTS OF PARENTS OF HANDICAPPED CHILDREN

### A. Parent Participation in the IEP

SITUATION: The teachers in a rural school district have decided that one of their programs for this year will be a campaign to inform the parents of handicapped students of their childrens' right to a free appropriate public education (FAPE). In preparation for this campaign they have asked specifically how the parents are to be involved in the IEP meetings.

RESPONSE/DOCUMENTATION: One of the major reasons why PL 94-142 was enacted was to provide for the procedural due process rights of handicapped children and their parents in relation to educational matters. The law and the regulations make it very clear that the parents of a handicapped child are to be present at the IEP meeting, and that the meeting is to be held at their convenience. Section 121a.345 of the PL 94-142 regulations regarding parent participation in IEPs reads as follows:

> *(a) Each public agency shall take steps to insure that one or both of the parents of the handicapped child are present at each meeting or are afforded the opportunity to participate, including:*
> *(1) Notifying parents of the meeting early enough to insure that they will have an opportunity to attend; and*
> *(2) Scheduling the meeting at a mutually agreed on time and place.*
> *(b) The notice must indicate the purpose, time, and location of the meeting, and who will be in attendance.*
> *(c) If neither parent can attend, the public agency shall use other methods to insure parent participation, including individual or conference telephone calls.*
> *(d) A meeting may be conducted without a parent in attendance if the public agency is unable to convince the parents that they should attend. In this case the public agency must have a record of its attempts to arrange a mutually agreed on time and place such as:*
> *(1) Detailed records of telephone calls made or attempted and the results of those calls,*
> *(2) Copies of correspondence sent to the parents and any responses received, and*
> *(3) Detailed records of visits made to the parent's home or place of employment and the results of those visits.*
> *(e) The public agency shall take whatever action is necessary to insure that the parent understands the proceedings at a meeting, including arranging for an interpreter for parents who are deaf or whose native language is other than English.*

*(f) The public agency shall give the parent, on request, a copy of the individualized education program....*

*Comment. The notice in paragraph (a) could also inform parents that they may bring other people to the meeting. As indicated in paragraph (c), the procedure used to notify parents (whether oral or written or both) is left to the discretion of the agency, but the agency must keep a record of its efforts to contact parents.*

## B. Independent Evaluation

SITUATION: The parents of one student feel that their child has been improperly evaluated as handicapped. They want to know if they must bear the cost of an independent evaluation which they fear would be beyond their means.

RESPONSE/DOCUMENTATION: Maybe, depending upon the circumstances. Section 121a.503 ("Independent educational evaluation") of the PL 94-142 regulations reads:

*(a) General. (1) The parents of a handicapped child have the right under this part to obtain an independent educational evaluation of the child, subject to paragraphs (b) through (e) of this section.*

*(2) Each public agency shall provide to parents, on request, information about where an independent educational evaluation may be obtained.*

*(3) For the purposes of this part:*

*(i) "Public expense" means that the public agency either pays for the full cost of the evaluation or insures that the evaluation is otherwise provided at no cost to the parent, consistent with § 121a.301 of Subpart C.*

*(b) Parent right to evaluation at public expense. A parent has the right to an independent educational evaluation at public expense if the parent disagrees with an evaluation obtained by the public agency. However, the public agency may initiate a hearing under § 121a.506 of this subpart to show that its evaluation is appropriate. If the final decision is that the evaluation is appropriate, the parent still has a right to an independent educational evaluation, but not at public expense.*

*(c) Parent initiated evaluations. If the parent obtains an independent educational evaluation at private expense, the results of the evaluation:*

*(1) Must be considered by the public agency in any decision made with respect to the provision of a free appropriate public education to the child, and*

*(2) May be presented as evidence at a hearing under this subpart regarding that child.*

*(d) Requests for evaluations by hearing officers. If a hearing officer requests an independent educational evaluation as part of a hearing, the cost of the evaluation must be at public expense.*

*(e) Agency criteria. Whenever an independent evaluation is at public expense, the criteria under which the evaluation is obtained, including the location of the evaluation and the qualifications of the examiner, must be the same as the criteria which the public agency uses when it initiates an evaluation.*

## C. Parental Consent and Notice

SITUATION: The parents of a handicapped child want to know on what specific decisions relating to the education of their child they are to receive prior notice and to provide their consent.

RESPONSE/DOCUMENTATION: The school district must notify the parents in writing before it proposes or refuses "*to initiate or change the identification, evaluation or educational placement of the child or the provision of a free appropriate public education to the child.*" Parental consent is required only for a preplacement evaluation and initial placement of the child. The sections of PL 94-142 regulations relating to notice and consent follow:

> *§ 121a.504 Prior notice; parent consent.*
> *(a) Notice. Written notice which meets the requirements under § 121a.505 must be given to the parents of a handicapped child a reasonable time before the public agency:*
> *(1) Proposes to initiate or change the identification, evaluation, or educational placement of the child or the provision of a free appropriate public education to the child, or*
> *(2) Refuses to initiate or change the identification, evaluation, or educational placement of the child or the provision of a free appropriate public education to the child.*
> *(b) Consent. (1) Parental consent must be obtained before:*
> *(i) Conducting a preplacement evaluation; and*
> *(ii) Initial placement of a handicapped child in a program providing special education and related services.*
> *(2) Except for preplacement evaluation and initial placement, consent may not be required as a condition of any benefit to the parent or child.*
> *(c) Procedures where parent refuses consent. (1) Where State law requires parental consent before a handicapped child is evaluated or initially provided special education and related services, State procedures govern the public agency in overriding a parent's refusal to consent.*
> *(2) (i) Where there is no State law requiring consent before a handicapped child is evaluated or initially provided special education and related services, the public agency may use the hearing procedures in §§ 121a.506-121a.508 to determine if the child may be evaluated or initially provided special education and related services without parental consent.*
> *(ii) If the hearing officer upholds the agency, the agency may evaluate or initially provide special education and related services to the child without the parent's consent, subject to the parent's rights under §§121a.510-121a.513*

*Comment: 1. Any changes in a child's special education program, after the initial placement, are not subject to parental consent under Part B, but are subject to the prior notice requirement in paragraph (a) and the individualized education program requirements in Subpart C.*

*2. Paragraph (c) means that where State law requires parental consent before evaluation or before special education and related services are initially provided, and the parent refuses (or otherwise withholds) consent, State procedures, such as obtaining a court order authorizing the public agency to conduct the evaluation or provide the education and related services, must be followed.*

*If, however, there is no legal requirement for consent outside of these regulations, the public agency may use the due process procedures under this subpart to obtain a decision to allow the evaluation or services without parental consent. The agency must notify the parent of its actions, and the parent has appeal rights as well as rights at the hearing itself.*

*§§ 121a.505 Content of notice*

*(a) The notice under § 121a.504 must include:*

*(1) A full explanation of all of the procedural safeguards available to the parents...;*

*(1) A description of the action proposed or refused by the agency, an explanation of why the agency proposes or refuses to take the action, and a description of any options the agency considered and the reasons why those options were rejected;*

*(3) A description of each evaluation procedure, test, record, or report the agency uses as a basis for the proposal or refusal; and*

*(4) A description of any other factors which are relevant to the agency's proposal or refusal.*

*(b) The notice must be:*

*(1) Written in language understandable to the general public, and*

*(2) Provided in the native language of the parent or other mode of communication used by the parent, unless it is clearly not feasible to do so.*

*(c) If the native language or other mode of communication of the parent is not a written language, the State or local educational agency shall take steps to insure:*

*(1) That the notice is translated orally or by other means to the parent in his or her native language or other mode of communication;*

*(2) That the parent understands the content of the notice, and*

*(3) That there is written evidence that the requirements in paragraph (c) (1) and (2) of this section have been met.*

## D. Confidentiality of Information

SITUATION: The parents of a handicapped child want to know if the data and record-keeping requirements of PL 94-142 guarantee confidentiality of information.

RESPONSE/DOCUMENTATION: Yes. Provisions from the Family Educational Rights and Privacy Act of 1974 are written into the PL 94-142 regulations. Section 121a.572(a) states:

*Each participating agency shall protect the confidentiality of personally identifiable information at collection, storage, disclosure, and destruction stages.*

Section 121a.562 provides that:

*(a) Each participating agency shall permit parents to inspect and review any education records relating to their children which are collected, maintained, or used by the agency under this part. The agency shall comply with a request without unnecessary delay and before any meeting regarding an individualized education program or hearing relating to the identification, evaluation, or placement of the child, and in no case more than 45 days after the request has been made.*

*(b) The right to inspect and review education records... includes:*

*(1) The right to a response from the participating agency to reasonable requests for explanations and interpretations of the records;*

*(2) The right to request that the agency provide copies of the records...; and*

*(3) The right to have a representative of the parent inspect and review the records.*

The parents also have the right to request that the educational agency amend its records if it is determined that the information contained therein is "*inaccurate or misleading or violates the privacy or other rights of the child...*" (121a.567 [a]). If the agency refuses, then the parents have a right to a hearing (121a.568). If the decision of the hearing officer is in favor of the educational agency, the parents have the further right to have a statement placed in their child's file setting forth their comments and reasons for disagreeing with the agency over the information contained in the file (121a.569).

Each participating agency must maintain a list, available to the public, of persons having access to personally identifiable information (121a.572[d]) and "*parental consent must be obtained before personally identifiable information is... disclosed to anyone other than officials or participation agencies collecting or using the information...*" (Section 121a.571).

Prior to collecting information, the state educational agency must give notice to parents of the data it intends to collect, of the procedures and sources it will use to collect this information, and of their rights (Section 121a.561). If personally identifiable information is no longer needed to provide educational services to

a child, then the parents must also be informed of their right to have the information destroyed, although "*a permanent record of a student's name, address, and phone number, his or her grades, attendance record, classes attended, grade level completed, and year completed may be maintained without time limitation*" (Section 121a.573[b]).

## E. Procedural Due Process Rights of Parents

SITUATION: The parents of a handicapped child are not satisfied with the educational program their child is receiving. They want to know if they have an appeal procedure under PL 94-142.

RESPONSE/DOCUMENTATION: Yes, defintely. The parents of a handicapped child have the right to initiate an impartial due process hearing on any matter relating to the identification, evaluation, or educational placement of their child or the provision of a free appropriate public education (Section 121a.506[a]). At the hearing, as spelled out in Section 121a.508, they have the right to:

> *(1) Be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of handicapped children;*
> *(2) Present evidence and confront, cross-examine, and compel the attendance of witnesses;*
> *(3) Prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least five days before the hearing;*
> *(4) Obtain a written or electronic verbatim record of the hearing;*
> *(5) Obtain written findings of fact and decisions...;*
> *(6) Have the child who is the subject of the hearing present; and*
> *(7) Open the hearing to the public.*

If the parents are unhappy with the decision of the hearing officer, they have the right to appeal the decision to the state educational agency (Section 121a.510) as well as to bring civil action under PL 94-142 (Section 121a.511). A final decision must be reached no later than 45 days after receipt of a request for a hearing and no later than 30 days in the case of a review by the state educational agency (Section 121a.512). During these proceedings, the child remains in his/her current placement unless the parents and educational agency agree otherwise (Section 121a.513).

# APPENDIX

## Exchange of Correspondence Between NEA and BEH Regarding Questions of Interpretation

NATIONAL EDUCATION ASSOCIATION • 1201 16th St., N.W., Washington, D C 20036 • (202) 833-4000
JOHN RYOR, President
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February 2, 1978

Mr. Thomas B. Irvin
Policy Officer
Bureau of Education for the
Handicapped
400 Maryland Avenue, S.W.
Washington, D.C. 20202

Dear Mr. Irvin:

Thank you for coming to our office to discuss our draft of a "Teacher's Reference Guide to PL 94-142." As per our agreement at that meeting, I am referring to you questions of interpretation of the Regulations which still remain unclear. (Please answer with relevant citations.) These are:

1. What procedure should the teacher follow when he or she disagrees with the contents of the IEP and/or the placement of a handicapped child? Address any differences which may occur in procedure if:

   a. The teacher has been a party to the IEP meeting.

   b. The teacher has not been a party to the IEP meeting.

2. Does the teacher have the right to call for an IEP meeting?

3. Can a teacher refuse the placement of a handicapped child into his or her classroom?

4. Are teachers one of the parties included under § 121a.511 Civil action which reads:

> Any party aggrieved by the findings and decision made in a hearing who does not have the right to appeal under § 121a.510 of this subpart, and any party aggrieved by the decision of a reviewing officer under § 121a.510 has the right to bring a civil action under section 615(e) (2) of the Act.

5. On page 50 of the enclosed Draft III of the Guide a citation is given which mentions consultation -- § 121a.13(8). Could this citation be used by teachers as support to provide time for regular and special education teachers to meet to coordinate their programs in addition to the regular IEP meetings and evaluations?

6. Can PL 94-142 funds be used to pay for released time for teachers to participate in IEP meetings? In the comprehensive system of staff development?

7. Please review the section on "School District Liability For Educational Services Under PL 94-142" on page 36 of the draft.

8. Please again check the "tone" of the Situation descriptions.

I am enclosing six copies of our latest and final draft on the Guide. We have delayed publication of the document in order to give you a chance to go over the final version. It is critical that we get this document to press. Therefore, I would appreciate your comments on the Reference Guide within one week of receipt of this letter.

Sincerely,

Brenda Fox

Brenda Fox
Professional Associate
Instruction and Professional
Development (IPD)

BF:pm

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
OFFICE OF EDUCATION
WASHINGTON, D.C. 20202

May 3, 1978

Ms. Brenda Fox
Professional Associate
Instruction and Professional Development
National Education Association
1201 16th Street, N.W.
Washington, D. C. 20036

Dear Ms. Fox:

Thank you for your letter in which you asked us to review your teachers' guide on P.L. 94-142 and to respond to questions raised about the regulations.

We are pleased to have an opportunity to provide some assistance to the NEA regarding the general technical correctness of your draft guide. However, as you know, we are not in a position to endorse documents prepared by any agency or organization.

With respect to the questions you have raised, I should point out that many of the issues are not addressed in any way by the Act or regulations. Essentially, P.L. 94-142 is concerned with agency responsibilities and parent-child rights and does not focus on separate rights of teachers. For example, the regulations do not really cover such issues as when teachers disagree with the agency or parents regarding a particular placement or service for an individual handicapped child. Given the above state-of-affairs, the following is an attempt to respond to certain of your questions:

1. <u>What procedures do teachers follow when they disagree with IEP/Placement decisions</u>?

First, this question is not addressed in the Act or regulations. Second, teacher disagreements on IEP/placement decisions must be considered from two vantage points: disagreements which center on violations of childrens' rights and those concerning violations of teachers' rights. The general remedy or procedures to follow in seeking resolution would be different in each case.

a. <u>Violation of childrens' rights</u>. If the teacher feels that a handicapped child's placement or IEP services are not appropriate to the child, the teacher could request the agency to hold another meeting to review the child's current IEP. (When warranted, this could lead to a reevaluation of the child in accordance with section 121a.534 of the regulations.) If, after this step, the teacher feels that the child's rights are still being violated, the teacher could follow a number of other informal steps within

Page Two - Ms. Brenda Fox, NEA

the agency (e.g., meeting with the principal, superintendent, or school board), and ultimately might file a complaint with the State educational agency under section 121a.602 of the regulations.

b. Violation of teachers' rights. This matter is not covered by P.L. 94-142. When placement/service issues focus mainly on violations of the teachers' rights, these are matters to be resolved between the individual teacher and the agency and would be handled in the same general manner as any other teacher-agency disagreements.

2. Does a teacher have the right to call for an IEP meeting?

See answer to question #1.

3. Can a teacher refuse the placement of a handicapped child in his/her classroom?

As stated earlier, P.L. 94-142 does not address the separate rights or general responsibilities of teachers. Rather, the law and regulations focus on parent-child rights and agency responsibilities.

The local educational agency is responsible for insuring that each handicapped child (1) receives the services called for in his/her IEP and (2) is educated with non-handicapped children to the maximum extent appropriate. Also, as in other educational matters, the local agency is responsible for making all regular and special education teacher assignments. If a particular teacher disagrees with his or her assignment (whether it is to implement a handicapped child's IEP or to have the child placed in his/her classroom), this is a matter between the teacher and the agency and would be handled in the same general manner as any other teacher-agency disagreements.

4. Are teachers one of the parties under civil action (§121a.511)?

There is no indication in either the legislative history or the Act itself that the Congress perceived teachers as being a separate party. Our interpretation is that there are only two parties: parents and agency.

5. Can P.L. 94-142 funds be used for released time for teachers to participate in IEP meetings? Inservice Training? For the purchase of learning materials?

The Part B funds may be used for any service or activity that is directly involved in the education of handicapped children (including the above items) if the priorities and other requirements of the Act are met.

Page Three - Ms. Brenda Fox, NEA

I sincerely hope that this letter will be helpful to you. We simply do not have answers to all questions at this point in time. In implementing a law that is as comprehensive and far reaching as P.L. 94-142, it is obvious that policy development and interpretation will evolve over a long period of time. We look forward to working with you and your colleagues in this endeavor.

Sincerely yours,

Thomas B. Irvin

Thomas B. Irvin
Acting Chief,
State Policy & Administrative
Review Branch
Bureau of Education for the
Handicapped

cc: Raphael Simches
Jack Jones
Bill Tyrrell
Jerry Vlasak

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